

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

## JOSEPH NAPOLEON WARREN III,

Case No.: 2:19-cv-01113-JAD-NJK

Petitioner

V.

HOWELL, et al.,

## Respondents

## **Order Dismissing Case and Denying Motion for Appointment of Counsel**

[ECF Nos. 1, 3, 7]

Petitioner Joseph Napoleon Warren, III petitioned for a writ of habeas corpus under 28

U.S.C. § 2254.<sup>1</sup> I issued an order to show cause as to whether the petition should be dismissed as time-barred under the Anti-Terrorism and Effective Death Penalty Act's (AEDPA) one-year statute of limitations.<sup>2</sup> In the show-cause order, I noted that it appeared from the state-court record that AEDPA's deadline for Warren to file a federal habeas petition had expired nearly twenty-six years before Warren filed this petition.<sup>3</sup> Because Warren has failed to demonstrate that his petition was filed within the limitations period or that he is entitled to equitable tolling of the AEDPA deadline, I dismiss his petition.

## Discussion

18 Warren responds to the show-cause order by contending that he is entitled to equitable  
19 tolling of the one-year limitations period on the basis of the “magnitude of the constitutional  
20 violations” in his case.<sup>4</sup> He asserts that the guilt and penalty phases of his trial should have been

|<sup>1</sup> ECF No. 1-1.

2 ECF No. 6.

23 | <sup>3</sup>*Id.*

<sup>4</sup>ECF No. 7 at 2.

1 bifurcated and that the prosecutor committed misconduct.<sup>5</sup> He also includes as exhibits the jury  
2 instructions from the trial against him, excerpts from the trial transcript, the jury verdict, and the  
3 case summary.<sup>6</sup> But Warren does not attempt to explain how he diligently pursued his rights or  
4 how some extraordinary circumstance stood in his way during these intervening decades.<sup>7</sup> His  
5 response is silent as to why he did not pursue federal habeas relief earlier.<sup>8</sup>

6 I find that Warren has failed to demonstrate a sufficient basis for equitable tolling or to  
7 otherwise excuse the delay. Because Warren's federal habeas petition was untimely filed, and  
8 because Warren has not shown that he is entitled to statutory or equitable tolling, I dismiss  
9 Warren's petition as untimely.

10 IT IS THEREFORE ORDERED that the petition (**ECF No. 1-1**) is **DISMISSED** with  
11 **prejudice**.

12 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED** because  
13 jurists of reason would not find the court's dismissal of this decades-late petition to be debatable  
14 or incorrect.

15 IT IS FURTHER ORDERED that petitioner's motion for appointment of counsel (**ECF**  
16 **No. 3**) is **DENIED** as moot.

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<sup>5</sup> *Id.* at 3.

21<sup>6</sup> *Id.* at 6–29.

22<sup>7</sup> See *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005); *Calderon v. U.S. Dist. Court (Beeler)*, 128  
23 F.3d 1283, 1288 (9th Cir. 1997), overruled in part on other grounds, *Calderon v. U.S. Dist.*  
*Court (Kelly)*, 163 F.3d 530 (9th Cir. 1998).

<sup>8</sup> See ECF No. 7.

1 IT IS FURTHER ORDERED that the Clerk of Court is directed to DETACH AND FILE  
2 THE PETITION (ECF No. 1-1), ENTER JUDGMENT accordingly, and CLOSE THIS CASE.  
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5 U.S. District Judge Jennifer A. Dorsey  
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7 October 28, 2019  
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